

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AFFYMETRIX, INC.,)	
)	
Plaintiff/Counter-Defendant)	C.A. No. 04-901-JJF
)	
v.)	
)	
ILLUMINA, INC.,)	
)	
Defendant/Counter-Plaintiff)	

**AFFYMETRIX’S OBJECTIONS TO DEFENDANTS’
PROPOSED PRELIMINARY JURY INSTRUCTIONS**

On February 5, 2007, the parties submitted their joint proposal for preliminary jury instruction numbers 1.4, 1.5, 1.7 and 1.8. On March 2, 2007, Illumina submitted revised preliminary jury instructions to the Court for instruction numbers 1.1, 1.2, 1.3 and 1.6. Those revised constructions included “red-lined” changes against a draft of those instructions Affymetrix had sent to Illumina.

Affymetrix objects to the additional (underlined) changes Illumina proposes to preliminary instruction numbers 1.1 and 1.2. Illumina’s additions propose to tell the jury that it has raised validity and enforceability defenses in this case and to tell the jury about prior art. Given the Court’s bifurcation of validity and enforceability from this case, Affymetrix objects to instructing to jury regarding other issues in the case. Such instructions are irrelevant and risk jury confusion.

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March 4, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2007, I electronically filed the foregoing document using CM/ECF which will send notification of such filing(s) to the following:

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I also certify that copies were caused to be served on March 4, 2007 upon the following in the manner indicated:

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